

The findings of fact and conclusions of law set forth in the Award of the Administrative Law Judge specify in some detail the facts and law applicable to this case

and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The Appeals Board finds claimant has proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent resulting in a 100 percent permanent partial general disability. Respondent's contention that claimant did not suffer accidental injury arising out of or in the course of his employment with respondent is unsupported in the record. Claimant's testimony discussing the circumstances surrounding his injury is uncontradicted.

The respondent contends the medical testimony of Dr. Gregg M. Snyder should be persuasive as Dr. Snyder was the treating physician. It is noted Dr. Snyder did not see claimant after three months post-surgery. Dr. Snyder did opine that claimant's condition could improve or worsen for some time depending upon the circumstances. He admitted he was not fully aware of claimant's ongoing difficulties.

Both Dr. R. W. Meador and Dr. Robert A. Rawcliffe, Jr. had the opportunity to see claimant several years post-surgery. Both agreed claimant suffered ongoing, extensive symptomatology. Both also agreed claimant would be incapable of returning to his duties as a truck driver due to the ongoing difficulties suffered as a result of this aggravation of his preexisting condition.

The Appeals Board acknowledges the videotape placed into evidence by the respondent paints claimant in a slightly less than credible light. Nevertheless, the medical reports of the doctors provide sufficient evidence for the Appeals Board to find claimant has suffered substantial disability as a result of his injury and is incapable at this time of returning to employment as truck driver. While it is evident that claimant would be capable of some types of physical activity in the employment arena, the law as set forth in Ploutz v. Ell-Kan Company, 234 Kan. 953, 676 P.2d 273 (1984), as it interprets K.S.A. 44-510e (1974), leaves the trier of fact little leeway in deciding what, if any, disability a claimant may or may not be entitled to.

The Appeals Board finds the evidence supports an award of 100 percent permanent partial general disability.

The award of the Administrative Law Judge granted claimant a total award of \$77,671.40. For an injury occurring on July 1, 1986 the maximum award for claimant would be \$75,000. As such, the Administrative Law Judge's award shall be modified to reflect the appropriate maximum benefits allowable under the law.

Additional issues decided by the Administrative Law Judge but not appealed to the Appeals Board are affirmed herein insofar as they are not in contrary to the opinions stated in his Award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Thomas F. Richardson dated November 15, 1994 shall be, and is, modified in that claimant Charlie Hammonds is granted an award against respondent Sooner Transport, and its insurance carrier, National Union Fire Insurance Co., for an accidental injury occurring on July 1, 1986.

Claimant is entitled to 15 weeks temporary total disability compensation at the rate of \$187.16 per week totaling \$2,807.40, followed by weekly payments at the rate of \$187.16 per week for a total award of \$75,000.00 all of which is due and owing and ordered paid in one lump sum minus amounts previously paid.

Respondent and its insurance carrier are ordered to reimburse claimant and/or pay unpaid medical expenses in the amount of \$4,789.75 as itemized in claimant's submission letter and awarded in the original award.

Respondent and its insurance carrier are ordered to payment of an amount not to exceed \$350.00 as unauthorized medical upon presentation of an itemized statement verifying same.

Claimant's contract of employment with his attorney is approved insofar as it is not in contravention to K.S.A. 44-536.

Fees and expenses necessary to defray the cost of the administration of the Kansas Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Underwood & Shane Transcript of proceedings	\$125.00
Underwood & Shane Transcript of proceedings	\$155.50
Underwood & Shane Transcript of proceedings	\$367.90
Hostetler & Associates, Inc. Deposition of James T. Oliver	\$122.70
Hostetler & Associates, Inc. Deposition of Charles Harkins III	\$169.35
Kelley, York & Associates Deposition of Dr. Rawcliffe	\$246.25
Kelley, York & Associates Deposition of Dr. Snyder	\$162.24
Court Reporting Service Deposition of Dr. Meador	\$223.40

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Myrlen L. Bell, Medicine Lodge, KS
J. Michael Lehman, Wichita, KS
Jerry M. Ward, Great Bend, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director